IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8689 OF 2004

Subhash Bapurao Jagtap .. Petitioner

v/s.

The Commissioner, Pune Municipal Corporation, Pune and ors. .. Respondents

Mr.S.K.Talsania i/by Ms.I.M.Koparkar for the petitioner.

Mr.S.R.Nargolkar, Assistant Government Pleader for the respondent No.3.

Mr.R.G.Ketkar for respondent Nos.1 and 2.

CORAM : R. M. LODHA AND
R.S. MOHITE, JJ.

DATED : 21st April 2005

P.C.

Mr.S.K.Talsania, the learned counsel for the petitioner prays for withdrawal of this writ petition with liberty to the petitioner to pursue the remedy of appeal as provided in section 56(4) of the Bombay Provincial Municipal Corporation Act, 1949 in challenging the impugned order of dismissal dated 25.5.2004 passed by the Additional Commissioner, Pune Municipal Corporation.

2. Mr.R.G.Ketkar, the learned counsel for respondent Nos.1 and 2 submits that the appeal under section 56(4) against the dismissal order dated 25.5.2004 may not be maintainable.

3. Since the petitioner prays for withdrawal of the writ petition with liberty to the petitioner to pursue the remedy of statutory appeal provided in section 56(4) of the Act of 1949, we find no justification in refusing the petitioner's prayer. Whether the appeal against the order dated 25.5.2004 is maintainable or not shall be examined by the appellate authority and in that regard all contentions are kept open.

4. The petitioner bonafidely approached this court in challenging the order dated 25.5.2004 and by now since the limitation for filing the appeal was expired, we are of the view that if the appeal is filed now by the petitioner before the statutory authority within time that may be granted by us, the delay should not come in his way.

5. We, accordingly, dispose of this writ petition by the following order:-

ORDER

i) The petitioner is permitted to pursue the statutory remedy of appeal under section 56(4) of the Bombay Provincial Municipal Corporation Act,

1949 against the order dated 25.5.2004.

ii) If the appeal is preferred by the petitioner within four weeks from today, such appeal shall be treated within time and proceeded with by the appellate authority accordingly.

iii) All contentions regarding the maintainability of the appeal are kept open to be considered and examined by the appellate authority.

6. The appeal is allowed to be withdrawn as aforeindicated.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)